IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

Bail Appl..No. 7272 of 2007()

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CRMP.3943/2007 of II ADDL. DISTRICT COURT, PALAKKAD
CRIME NO.236/07 OF CHITTUR POLICE STATION

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: PETITIONERS/ACCUSED NO.5 AND 15

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1. SHAJAHAN, AGED 27 YEARS,
S/O ABDUL KAREEM, CHADI HOUSE,
METTUVALAVU, THATHAMANGALAM,
PALAKKAD DISTRICT.

2. IBRAHIM, AGED 28 YEARS,
S/O KABEER, KADAVALAVU,
THATHAMANGALAM.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS: COMPLAINANT

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STATE OF KERALA, THROUGH THE
SUB INSPECTOR OF POLICE, CHITTUR POLICE STATION,
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 28/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R.BASANT, J**

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**B.A.No.7272 of 2007**

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**Dated this the 28th day of November, 2007**

**ORDER**

Application for anticipatory bail. Petitioners face allegations in a crime registered for offences punishable, inter alia, under Sections 326 and 308 r/w 149 I.P.C. The alleged incident took place on 9.9.07. 15 persons have by now been arrayed as accused. Petitioners are accused 5 and 15. Accused 5 is named in the F.I.R. Accused 15 has been arrayed as accused on the basis of subsequent investigation. All the co-accused have by now been arrested and enlarged on bail. The petitioners also apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. The crux of the allegations against the petitioners is that they along with co-accused were members of an unlawful assembly of persons who restrained the defacto complainant who was proceeding to the venue of an incident. In prosecution of the common object of the unlawful assembly accused 1 and 2 wielded dangerous weapons. The others were also present and they participated in the

incident, it is alleged. The learned counsel for the petitioners prays that anticipatory bail may be granted to the petitioners.

3. The learned Public Prosecutor submits that there are absolutely no reasons exist justifying the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C.

4. Having considered all the relevant inputs, I agree with the learned Public Prosecutor, that the petitioners herein must surrender before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal and ordinary course. I find no features in this case which can persuade this Court to invoke the extraordinary equitable discretion under Section 438 Cr.P.C.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioners surrender before the Investigating Officer or the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

**(R.BASANT, JUDGE)**

rtr/-